IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.604 OF 2000

Dattatraya Dhondiba Dhumal .. Appellant.
Vs.
Balasaheb Sonu Deshmukh & Anr. .. Respondents.

WITH

SECOND APPEAL NO.606 OF 2000

Dattatraya Dhondiba Dhumal .. Appellant.
Vs.
Balasaheb Sonu Deshmukh & Ors. .. Respondents.

Mr.Nitin V.Gangal for the appellants.
Mr.N.V.Vechalekar for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 13TH FEBRUARY, 2007

P.C.:

. Heard learned counsel for the parties.

2. Second Appeal No.604 of 2000 is directed against the concurrent findings recorded by the courts below by which a suit filed by the appellant-plaintiff for declaration and injunction has been dismissed. The appellant claims ownership over the suit property on the basis of a Will allegedly executed by Sonabai, the grand-mother of the appellant. Sonabai died on 3.3.1980. Her husband - Shankar, who predeceased her, died on 18.6.1969. Shankar and Sonabai died leaving behind three daughters, that is, Savitribai, Sitabai

and Vatsalabai. The plaintiff is the son of Sitabai. He claims right over the suit property on the basis of the Will executed by Sonabai on 31.12.1976. He claims that Savitribai, Sitabai and Vatsalabai had relinquished their right in the suit property and in view thereof the Will executed by Sonabai in respect of the entire property is legal and valid. I have doubt whether Sonabai could execute the Will in favour of the plaintiff in respect of the entire property since after the death of Shankar, Sonabai and all the three daughters get equal share in the property. However, I do not wish to enter into that controversy in view of the fact that the factum of relinquishing the right by all the three daughters has not been established, as has rightly been held by the courts below and dismissed the suit. I find no reason to interfere with the concurrent findings of the fact. In the circumstances the second appeal stands dismissed.

3. In view of dismissal of this second appeal, second appeal no.606 of 2000 also stands dismissed for self same reason.

(D.B.Bhosale, J.)